

**OFFICE OF SPECIAL MASTERS**

Filed: November 21, 2007

Refiled Redacted: January 8, 2008

JANE DOE/09, Natural	)	
Mother of and Guardian ad Litem	)	UNPUBLISHED
for CHILD DOE/09, a minor,	)	
	)	No. [Redacted]V
	)	
Petitioner,	)	Motion for Judgment on
	)	the Record; Allegations
v.	)	of Child Abuse; Subdural
	)	Hematoma; Twins
SECRETARY OF THE DEPARTMENT	)	
OF HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

Thomas P. Gallagher, Somers Point, NJ, for petitioner.

Althea W. Davis, U.S. Department of Justice, Washington, DC, for respondent.

**DECISION<sup>1</sup>**

On February 17, 2006, Jane Doe/09 (petitioner), as the natural mother and guardian ad litem for her minor daughter, Child Doe/09, filed a petition pursuant to the

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<sup>1</sup> Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless an issued decision contains trade secrets or commercial or financial information that is privileged or confidential, or the decision contains medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. When a special master files a decision or substantive order with the Clerk of the Court, each party has 14 days within which to identify and move for the redaction of privileged or confidential information before the document's public disclosure. Petitioners so moved and the Decision is redacted.

National Vaccine Injury Compensation Program<sup>2</sup> (the Act or the Program). Petitioner alleges that “[o]n February 20, 2003, Child Doe/09 was vaccinated with Dtap,<sup>[3]</sup> HIB,<sup>[4]</sup> Polio and Prevnar<sup>[5]</sup> at Chesterland Pediatrics.” See Petition ¶ 12, filed February 17, 2006. Mrs. Doe/09 claims that the vaccinations Child Doe/09 received on February 20, 2003, caused Child Doe/09’s bilateral subdural hematoma.<sup>6</sup>

On July 23, 2007, petitioner’s counsel filed a Motion for Judgment on the Record (P’s Mot.). The record in this case consists of: (1) medical records, which include the prenatal treatment records of Jane Doe/09, Child Doe/09 birth records, Child Doe/09’s immunization records, and records of the treatment Child Doe/09 received at the Children’s Hospital Medical Center and at the Cleveland Clinic Foundation; and (2) records of the investigation conducted by the police and the local family services agency into the hospital’s allegations that Child Doe/09 and her twin sister, showed signs of child abuse.

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<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

<sup>3</sup> The DTaP vaccine is “a combination of diphtheria toxoid, tetanus toxoid, and pertussis vaccine; administered intramuscularly for simultaneous immunization against diphtheria, tetanus, and pertussis.” Dorland’s Illustrated Medical Dictionary 1998 (30th ed. 2003).

<sup>4</sup> This vaccine protects against infection by the haemophilis influenzae type b bacterium. Dorland’s Illustrated Medical Dictionary, supra note 4, at 1999.

<sup>5</sup> Prevnar is a brand name for “a preparation of pneumococcal heptavalent conjugate vaccine,” which protects against infection by the Streptococcus pneumoniae bacteria. Dorland’s Illustrated Medical Dictionary, supra note 4, at 1505, 1999.

<sup>6</sup> A subdural hematoma is an “accumulation of blood in the subdural space. In the severe *acute* form, both blood and cerebrospinal fluid enter the space as a result of laceration of the brain and a tear in the arachnoid, adding subdural compression to the direct injury to the brain. In the *chronic* form, only blood effuses into the subdural space as a result of rupture of the bridging veins, usually due to a closed head injury. The effusion is a gradual process resulting, weeks after the injury, in headache and progressive focal signs that reflect the location of the mass.” Dorland’s Illustrated Medical Dictionary, supra note 4, at 825.

Petitioner's motion for judgment on the record is now ripe for decision.

## **I. Facts**

Child Doe/09 was born on October 21, 2002, the second of twin girls born to Mrs. Doe/09 after 33 weeks gestation. Petitioner's Third Submission of Required Documents<sup>7</sup> (Pet. Third Subm.), Ex. 2 at 69. Child Doe/09 soon manifested several serious medical conditions. Shortly after her birth, she was transferred to Rainbow Babies and Children's Hospital (Rainbow Babies), where she was assessed with respiratory distress and dysmorphic features. Pet. Third Subm., Ex. 3 at 102. Child Doe/09 was discharged from Rainbow Babies on November 6, 2002, after a hospital course significant for the following conditions: (1) transient tachypnea [shortness of breath] requiring an oxygen hood during her first five hours of life; (2) presumed Noonan's Syndrome;<sup>8</sup> (3) a small Grade I intraventricular hemorrhage;<sup>9</sup> (4) asymptomatic polycythemia<sup>10</sup> with an elevated

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<sup>7</sup> Petitioner submitted four separate filings containing records in support of her claim. Each filing is labeled consecutively as "Petitioner's (First, Second, Third, or Fourth) Submission of Required Documents." References to each submission of documents will contain the number of the submission as well as the appropriate exhibit and page number within that submission of documents that contains the specific information being cited.

<sup>8</sup> Noonan's syndrome is "the phenotype of Turner's syndrome (webbed neck, ptosis, hypogonadism, congenital heart disease, and short stature) without gonadal dysgenesis; formerly *male Turner's syndrome* until the female counterpart was identified. Called also *Ullrich-Turner syndrome*." Dorland's Illustrated Medical Dictionary, *supra* note 4, at 1826.

<sup>9</sup> Hemorrhage is "the escape of blood from the vessels; bleeding. Small hemorrhages are classified according to size as petechiae (very small), purpura (up to 1 cm), and ecchymoses (larger). A large accumulation of blood within a tissue is called a *hematoma*." Dorland's Illustrated Medical Dictionary, *supra* note 4, at 834. Intraventricular hemorrhage is a cerebral hemorrhage into the ventricles. Dorland's Illustrated Medical Dictionary, *Id.*

<sup>10</sup> Polycythemia is an increase in the total red cell mass of the blood. Dorland's Illustrated Medical Dictionary, *supra* note 4, at 1479. Polycythemia can result in a thickening of of [the patient's] blood, which can cause serious health problems . . . a person with polycythemia may have abnormal blood clots, which could lead to a stroke. See American Academy of Family Physicians at <http://familydoctor.org/online/famdocen/home/common/blood/825.html#ArticleParsysMiddleColumn0002> (last visited November 19, 2007).

hematocrit; and (5) hydronephrosis.<sup>11</sup> Pet. First Subm., Ex. A at 28.

On November 11, 2002, five days after her hospital discharge, Dr. Kenneth Zahka, a pediatric cardiologist at Rainbow Babies, performed an echocardiogram on Child Doe/09 that revealed pulmonary valve stenosis.<sup>12</sup> Id. at 39. Three days later, on November 14, 2002, during a routine pediatric examination of Child Doe/09, Dr. Thomas Phelps, of Chesterland Pediatrics, found Child Doe/09 had poor weight gain and “goopy” eyes. Pet. Third Subm., Ex. 4 at 116.<sup>13</sup>

Child Doe/09 received her first hepatitis B vaccination on December 5, 2002. Pet. First Subm., Ex. A at 1. Child Doe/09’s subsequent physical on December 23, 2002, was unremarkable except for finding of a bifid uvula<sup>14</sup> and loose skin. Pet. Third Subm., Ex. 4 at 44. During that physical, Child Doe/09 received her first DTaP, Hib, polio, and pneumococcal conjugate vaccines. Id. at 1.

Approximately one month later, on January 27, 2003, Child Doe/09 was evaluated at the Genetics Clinic at University Hospitals of Cleveland for possible Turner’s or Noonan’s syndrome. Pet. Third Subm., Ex. 4 at 39. The evaluation revealed that Child Doe/09’s genetic chromosomes were normal, and thereby ruled out a diagnosis of Turner’s Syndrome. The impression from the evaluation, however, was that Child Doe/09 likely suffers from Noonan’s Syndrome even though her features are not completely characteristic of the syndrome. Id.

Child Doe/09 received her second DTaP, Hib, polio and Prevnar vaccines on February 20, 2003. Pet. First Subm., Ex. A at 1. It is this set of vaccinations that

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<sup>11</sup> Hydronephrosis is the distention of pelvis and calices of the kidney with urine, as a result of obstruction of the ureter. Dorland’s Illustrated Medical Dictionary, supra note 4, at 872.

<sup>12</sup> Pulmonary valve stenosis is “a narrowing of the opening between the pulmonary artery and the right ventricle, usually at the level of the valve leaflets.” Dorland’s Illustrated Medical Dictionary, supra note 4, at 1758.

<sup>13</sup> This exhibit contains handwritten page numbers starting at number 27, as well as page numbers (apparently produced by a mechanical stamp) that start at number 124. In referencing information contained in this exhibit, the undersigned is relying on the handwritten page numbers.

<sup>14</sup> A bifid uvula is the bifurcation of the uvula, considered an incomplete form of cleft palate. Dorland’s Illustrated Medical Dictionary, supra note 4, at 1996.

petitioner alleges caused Child Doe/09's injury.

Five days after Child Doe/09 received her second set of vaccinations, she saw Dr. Zahka again for follow up on her pulmonary stenosis. Id. at 43. Dr. Zahka wrote a letter to Child Doe/09's pediatrician, Dr. Phelps, stating that on examination, Child Doe/09 displayed "somewhat sluggish growth, with reasonable feeding and without any cardiac symptoms." Id. Dr. Zahka noted "some further progression of [Child Doe/09's] pulmonary stenosis. . .[.]" and he opined that it was likely that Child Doe/09 had only one coronary artery. Id. Dr. Zahka further opined that, based on her presentation, Child Doe/09 might suffer from a storage disease, cardiofaciocutaneous syndrome (a condition pertaining to the heart, face, and skin), and/or an endocrine disorder. Id. Dr. Zahka recommended a balloon dilation procedure be scheduled for March or April of 2003.<sup>15</sup> Id. Dr. Zahka's letter of February 25, 2003, does not reflect any clinical indications that Child Doe/09 was ill at the time of her visit.

The day after Dr. Zahka's follow-up examination of Child Doe/09 and six days after Child Doe/09's second set of vaccinations, Mrs. Doe/09 called Chesterland Pediatrics with complaints that Child Doe/09 was experiencing "sinus drainage." Pet. First Subm., Ex. A at 45. The phone log notes indicate that the office advised Mrs. Doe/09 that she was doing "everything right" and "suggested [making] an appoint[ment] if [Child Doe/09 was] not better." Id. at 46. The next day, Mrs. Doe/09 took Child Doe/09 into Chesterland Pediatrics for an examination because Child Doe/09 was "spitting up." Id. at 47. The following day, Mrs. Doe/09 called Chesterland Pediatrics again because Child Doe/09 was still vomiting. Id. at 48. Mrs. Doe/09 called Rainbow Advice Center on March 1, 2007, because Child Doe/09 was "very congested with gagging." Id. at 49. Mrs. Doe/09 was advised to take Child Doe/09 to see her primary care physician during office hours. Id. On March 6, 2003, Mrs. Doe/09 called Chesterland Pediatrics again to report that Child Doe/09 was "vomiting [her] own mucous." Id. at 51. Mrs. Doe/09 further indicated that Child Doe/09 had lost weight and requested advice about what to do. Id. at 50. Child Doe/09's medical records reflect that she was referred to the emergency room on March 6, 2003.<sup>16</sup> Id.

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<sup>15</sup> Child Doe/09's valvuloplasty for her pulmonic stenosis was delayed until March 31, 2003 due to her hospitalization on March 7, 2003. Resp. Ex. A at 148.

<sup>16</sup> The note does not indicate the reason for the referral or the name of the doctor who referred Child Doe/09. The telephone logs reflect that up to this time, Mrs. Doe/09 was calling the pediatric clinic daily. Specifically, between February 26 and March 6, 2003, Mrs. Doe/09 called the Rainbow Advice Center and Chesterland Pediatrics seeking advice on how to address Child Doe/09's symptoms of vomiting and mucous in the nose. Pet. Third Subm., Ex. 4 at 131-

Child Doe/09 presented to the Pediatric Emergency Department of University Hospitals of Cleveland on March 7, 2003, with a “one week history of emesis without other symptoms.” Pet. First Subm., Ex. A at 56. She was admitted to the hospital for an evaluation of her symptoms. An upper gastrointestinal series with small bowel follow through was performed and found to be normal. Id. An ultrasound of Child Doe/09’s head suggested the presence of extra-axial fluid bilaterally. Id.

An ophthalmologist was asked to examine Child Doe/09 to “r/o [rule out] intra retinal hemorrhages” and accidental trauma. Id. at 91. Hospital notes indicate that Child Doe/09’s ophthalmology exam was negative for retinal hemorrhages, and that a survey of her skeleton was negative for traumatic injury. See id. at 111.

A subsequent head CT performed on Child Doe/09 showed “fluid with signal consistent with cerebrospinal fluid.” Id. at 56. After consultation with neurosurgery, an MRI was ordered of Child Doe/09’s head. The MRI showed moderately sized, bilateral subdural hematomas that appeared to be subacute with parenchymal (organ) volume loss. Resp. Ex. A at 224. Child Doe/09’s head circumference was noted to have increased from below the 50<sup>th</sup> percentile in November, 2002, to above the 95<sup>th</sup> percentile by March, 2003.<sup>17</sup> Pet. First Subm., Ex. A at 111. A subdural drain was surgically inserted to relieve the high blood pressure in Child Doe/09’s head.<sup>18</sup> Id. at 56.

While Child Doe/09 was still hospitalized for an ongoing evaluation of her condition, Child Doe/09’s twin sister presented to the hospital with a broken left humerus. Pet. First Subm., Ex. A at 133. The nature of Child Doe/09’s twin sister’s injury on presentation to the hospital generated suspicion about the precipitating events leading to Child Doe/09’s hospitalization. The same day that Child Doe/09’s twin sister presented to the hospital, a hospital nurse made a referral to one of the hospital’s social workers “re: concerns [for Child Doe/09’s] sib[ling] who was in E[mergency]R[oom] with a fracture and concerns re: Child Doe/09’s fluid.” Id. at 98.

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134.

<sup>17</sup> Specifically, on November 6, 2002, Child Doe/09’s head circumference was 32 cm, placing it below the 5<sup>th</sup> percentile; on February 20, 2002, Child Doe/09’s head circumference was 39 cm, placing her at the 39<sup>th</sup> percentile; and on March 11, 2002, Child Doe/09’s head circumference was 42 cm, placing her at the 90<sup>th</sup> percentile. Resp. Ex. A at 4.

<sup>18</sup> The drain was discontinued on March 14, 2003. Resp. Ex. A at 71. Ultimately a subdural-peritoneal shunt was placed on March 25, 2003. Resp. Ex. A at 123.

Child Doe/09's parents reported to one of the examining physicians that they believed Child Doe/09's twin's injury was four days old and had resulted from Child Doe/09's three-year-old sister pulling her arm too roughly. Resp. Ex. C at 96. At the request of Child Doe/09's treating physicians, a social work consult was performed. Pet. First Subm., Ex. A at 132-133. After reviewing Child Doe/09's records and consulting with one of Child Doe/09's treating physicians, Dr. Lolita McDavid, a University Hospitals pediatrician, reported that Child Doe/09's injuries and Child Doe/09's twin's fractured arms were "highly suggestive of non-accidental trauma," and she recommended that the police and family services should be contacted. Id. at 133.

On March 14, 2003, the Garrettsville Police Department dispatched two officers to investigate the allegations of abuse of both of the Doe/09 twins, Child Doe/09 and her twin. Resp. Ex. B at 8. Ms. Courtney Armstrong, a case worker with Portage County Department of Jobs and Family Services (Family Services), joined the officers in a preliminary interview of Mr. and Mrs. Doe/09. Id. During the interview, the parents were unable to identify any clear occurrences that may have caused the twins' injury.<sup>19</sup> Moreover, the parents gave an account to the police that was different from the account given to the doctors at the hospital. During the interview with the police and the Family Services case worker, the Does reported that Child Doe/09's injury was due to another sibling climbing into Child Doe/09's twin's crib and accidentally stepping on her arm.<sup>20</sup> Id.

The police report states that an independent opinion of both twins' injuries was sought from Dr. R. Darryl Steiner, Medical Director, CARE Center, Department of Emergency Services, Children's Hospital Medical Center of Akron.<sup>21</sup> Id. Dr. Steiner reported in a

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<sup>19</sup> Mrs. Doe/09 pointed to a minor car accident on February 11, 2003, as a possible explanation for Child Doe/09's head injury. See Resp. Ex. C at 113, 115, 139.

<sup>20</sup> The Does/09 did not witness either of the alleged actions by Child Doe/09's sibling; rather the Does/09 reported that Child Doe/09's sibling spontaneously stated that she would not hurt Child Doe/09's twin again. Resp. Ex. B at 8.

<sup>21</sup> Among the police records filed in this case are numerous articles on child abuse and shaken-baby syndrome that appear to have been included in Child Doe/09's investigation file. Resp. Ex. B at 39-56. Also included in the records is a description of the symptoms and conditions that assist physicians in diagnosing Shaken Baby Syndrome; among the listed conditions for which physicians are advised to look are "retinal hemorrhages, subdural hematoma, and increased head size indicating excessive accumulation of fluid in the tissues of the brain." Id. at 53. Additionally, a filed National Institute of Neurological Disorders and Stroke information page on shaken baby syndrome identifies the symptoms associated with

letter dated April 8, 2003, to Ms. Armstrong, the Family Services case worker, that based on his review of both Child Doe/09's twin's and Child Doe/09's medical records, he concluded that the subdural hematoma suffered by Child Doe/09 was the result of an "abusive head injury."<sup>22</sup> Resp. Ex. C at 96-97. When the police investigators asked Dr. Steiner whether Child Doe/09's twin's injuries were "without a doubt" the result of shaken baby syndrome, he responded in the affirmative. Resp. Ex. B at 9. Consequently, on March 28, 2003, Child Doe/09's twin was removed from the Doe/09 residence pending further proceedings in juvenile court.<sup>23</sup> Resp. Ex. B at 9.

On March 31, 2003, Family Services petitioned the Court of Common Pleas for a grant of temporary custody of Child Doe/09 or, alternatively, for a grant of protective supervision. Resp. Ex. C at 2-6. Family Services filed the petition on the ground that evidence, which included Dr. Steiner's evaluation, indicated that both Child Doe/09's and Child Doe/09's twin's injuries were "consistent with physical abuse and could not have occurred through accidental means or as a result of medical problems." Resp. Ex. C at 5. Temporary custody of both Child Doe/09's twin and Child Doe/09 was granted to the paternal grandparents of the twins on April 2, 2003, with further direction that there was to be no unsupervised contact between the parents and these children. Resp. Ex. C at 16.

Child Doe/09 was released from the hospital on April 7, 2003. Her discharge summary reflects final diagnoses of "nonaccidental trauma, probable Noonan's Syndrome, valvular pulmonic stenosis status post valvuploplasty, left hydronephrosis,

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Shaken Baby Syndrome as "changes in behavior, irritability, lethargy, loss of consciousness, pale or bluish skin, vomiting, and convulsions." Id. at 44.

<sup>22</sup> Of note, Dr. Steiner indicated that based on Child Doe/09's twin's original x-rays, not only was her left arm broken, there was evidence of healing fractures of the left 2<sup>nd</sup> and 6<sup>th</sup> ribs, with an additional fracture to the right 6<sup>th</sup> rib identified upon viewing complete imaging studies. Id. Dr. Steiner noted that these fractures were different in age. Resp. Ex. C at 96-97. The police asked Dr. Steiner about the possibility that Child Doe/09's injuries resulted from a minor car accident on February 11, 2003. Dr. Steiner responded that based on the known information regarding the accident--in particular, that Mrs. Doe/09 had not suffered whiplash, there was no damage to the vehicle, and the children were in baby car seats--he believed it unlikely that Child Doe/09's injuries resulted from that accident. Resp. Ex. C at 113, 115. Moreover, the date of the accident was inconsistent with the dates of Child Doe/09's twin's rib fractures and Child Doe/09's hematoma injuries. Id. at 115.

<sup>23</sup> Child Doe/09 was not removed at this time because she was still an inpatient at the hospital receiving treatment for her injuries.



gastroesophageal reflux disease, craniosynostosis, failure to thrive, focal seizures, rotavirus.” Resp. Ex. A at 4-5. On April 10, 2003, Child Doe/09 and Child Doe/09’s twin were placed with a foster family when their grandparents were no longer able to care for them. Resp. Ex. C at 28.

Child Doe/09 and Child Doe/09’s twin subsequently were returned to their parents in December 2003. Family Services continued to monitor the children until March 2, 2004, at which time the Does regained legal custody and the court matter was terminated. Resp. Ex. C at 76.

There is no evidence in the record before the court to support the allegation that Child Doe/09’s received vaccinations on February 20, 2003, caused her alleged injury. Nor has petitioner filed medical opinion expert testimony supporting a causal link between Child Doe/09’s received vaccinations and her development of her subdural hematoma.

## **II. Discussion**

Before the court is a motion for judgment on the record. Child Doe/09’s medical records indicate that Child Doe/09 has a bilateral subdural hematoma. Mrs. Doe/09 alleges that Child Doe/09’s subdural hematoma resulted from her received vaccinations.

### **A. Legal Standard**

The Vaccine Act permits a petitioner to prove entitlement to compensation by showing that either: (1) the vaccinee suffered an injury listed on the Vaccine Injury Table within the prescribed time period, commonly referred to as a “Table” case, see § 300aa-14(a); or (2) the vaccinee suffered an injury that is not listed on the Vaccine Injury Table or did not occur within the prescribed time period, but is caused in fact by the received vaccination, commonly referred to as an “off-Table” case, see § 300aa-11(c)(1)(C)(ii)(I). By either method, petitioner bears the burden of proving her claim by a preponderance of the evidence. § 300aa-13(a)(1).

The Vaccine Injury Table lists certain injuries and conditions which, if found to occur within a prescribed time period, create a rebuttable presumption that the vaccine caused the injury or condition. 42 U.S.C. §300aa-14(a). Because a bilateral subdural hematoma is not an injury listed on the Vaccine Injury Table, Child Doe/09 does not benefit from the Act’s presumed causation. Id. Thus, petitioner must prove that the vaccines in-fact caused Child Doe/09’s injury, a so-called “off-Table” case.

## B. No Off-Table Injury Occurred

To establish entitlement to Program compensation absent presumption of causation, petitioner must prove, by a preponderance of the evidence, that the vaccinations that Child Doe/09 received caused her injury. Petitioner satisfies this burden of proof “by providing: (1) a medical theory causally connecting [Child Doe/09’s] vaccination and [her] injury; (2) a logical sequence of cause and effect showing that [Child Doe/09’s] vaccination was the reason for [her] injury; and (3) a showing of a proximate temporal relationship between [Child Doe/09’s] vaccination and [her] injury.” Althen v. Sec’y of Dept. of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). The logical sequence of cause and effect proffered by petitioner must be supported by a reputable scientific or medical explanation. Grant v. Sec’y Dept. of Health and Human Servs., 956 F.2d 1144, 1148 (Fed. Cir. 1992); Knudsen v. Sec’y of Dept. of Health and Human Servs., 35 F.3d 543, 548 (Fed. Cir. 1994) (stating that a causation theory before a special master must be supported by a “sound and reliable” medical or scientific explanation). See also RCFC App. B, Vaccine Rule 8(c) (instructing the special master to ensure that the considered evidence is “relevant and reliable”). Additionally, the diagnosis and opinion of a treating physician may be considered in the evaluation of a case. Capizzano v. Secretary of Health and Human Services, 440 F.3d 1317, 1326 (Fed. Cir. 2006).

In this case, petitioner has failed to supply any evidence of a causal connection between Child Doe/09’s vaccinations and her subdural hematoma. Child Doe/09’s medical records reflect only that her subdural hematoma was diagnosed after she received her second set of vaccinations. In her ample medical files, there is no noted association between the vaccinations and Child Doe/09’s subdural hematoma. Rather, Child Doe/09’s own treating physicians report that her injuries were consistent with “non-accidental trauma.” See Resp. Exs. A at 47; C at 96-97; B at 9.

Petitioner’s claim lacks support in the filed medical records. Nor has petitioner offered an expert opinion providing a medical theory causally connecting Child Doe/09’s vaccinations to her subdural hematoma. Without an opinion of causation from either a treating physician or an expert, petitioner’s counsel has moved for judgment on Child Doe/09’s medical records because petitioner’s counsel’s efforts “to obtain an expert who would causally relate the vaccination [in] question to the injury were unsuccessful.” P’s Mot. at 2.

The Vaccine Act prohibits a special master from making a finding of entitlement to compensation based on the claims of a petitioner that are unsupported by the medical records or by medical opinion. See § 300aa-13(a)(1). In this case, petitioner’s claim is

not substantiated by either the filed medical records or an offered medical opinion. Under the Vaccine Act, petitioner's claim must fail.

### **III. CONCLUSION**

The medical records in this case do not establish a causal connection between Child Doe/09's vaccinations and her subdural hematoma. Petitioner has offered no medical opinion causally connecting Child Doe/09's vaccinations and her injury. Without such evidence, petitioner has failed to establish entitlement to compensation under the Vaccine Act. Accordingly, petitioner's claim is **DISMISSED**. The Clerk of the Court shall **ENTER JUDGMENT** accordingly.<sup>24</sup>

**IT IS SO ORDERED.**

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Patricia E. Campbell-Smith  
Special Master

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<sup>24</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.